(2007) 03 SHI CK 0016

In the High Court Of Himachal Pradesh

Vidya Prakash Singh Negi and Others — APPELLANT

Vs

State of H.P. and Others — RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30

Citation : (2007) 2 ShimLC 163

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—These seven appeals, titles and particulars whereof are mentioned hereinabove, arise out of the same award, i.e. award dated 28.8.1995, delivered by the Additional District Judge, on a reference, under Sections 18 and 30 of the Land Acquisition Act, and the question of fact and law raised therein, are also common and so they are being disposed of by a common judgment.

2. First the relevant facts may be noticed. The Government of Himachal Pradesh issued a Notification, u/s 4 of the Land Acquisition Act on 27.7.1988, expressing its intention to acquire 153 Bighas 2 Biswas land situated in Mouza Pateog. Thereafter, Notification under Sections 6 and 7 was issued and notices u/s 9, were given to the affected persons and finally the market value was assessed at various rates according to the classification of the land. Disputes regarding apportionment of the market rate among the right holders were also there. The right holders were aggrieved by the quantum of compensation assessed and awarded by the Land Acquisition Collector, as also by the apportionment of compensation in accordance with the entries appearing in the revenue papers, and therefore, they approached the Land Acquisition Collector for making references to the District Judge, under Sections 18 and 34 of the Land Acquisition Act. Various references were accordingly made to the learend District Judge, Shimla. Eight of such references were assigned to the Additional District Judge, who consolidated them and disposed them of vide award dated

28.8.1995. In the present appeals, the aforesaid award has been assailed. The parties are aggrieved by the market rate of the land assessed by the learned Additional District Judge, as also the order of apportionment. It may be stated that the learned Additional District Judge has assessed the market value of the land at the rate of Rs. 1,22,500/-, per Bigha relying upon the judgment of this Court given in a case pertaining to the acquisition of land in an adjoining village known by the name of Patti Rihana. The parties are also aggrieved by the order regarding apportionment, which is to the effect that the parties are entitled to compensation as per their shares recorded in the revenue entries.

3. I have heard the learned Counsel for the parties and gone through the record.

4. It has been submitted on behalf of the right holders that a Civil Suit with respect to the declaration of shares of the parties in the acquired land was filed in the Court of Sub Judge, which stands disposed of and as per the judgment the parties are held entitled to compensation as per their shares recorded in the revenue papers. It has also been stated by the Counsel for the right holders that appeal against the said judgment/ decree of the Sub Judge is now pending in the Court of District Judge and that the parties would be satisfied if this Court passes an order that the compensation shall be apportioned among the right holders, as per final decision in the aforesaid civil suit, now pending in appeal in the Court of District Judge. It is ordered accordingly.

5. As regards the plea for further enhancement of the compensation, the Counsel representing the right holders have stated that in the year 1980, a large chunk of land situated in village Patti Rihana had been acquired by the then Shimla Development Authority, or say, the same authority, which has acquired the subject-matter of the present appeals and that this Court, vide judgment dated 2.12.1991 assessed the compensation for the said land at the rate of Rs. 1,22,500/- per Bigha, irrespective of the kind (class) of the land. As a matter of fact, the learned Additional District Judge has also relied upon this very judgment to work out the market rate of the land. But the learned Additional District Judge has not taken into account the fact that the land which was the subject-matter of the aforesaid judgment of this Court had been notified for acquisition in the year 1980, while the land which is the subject-matter of the present appeals was notified for acquisition in the year 1988 and during this period of eight years, the prices of land had registered unprecedented increase.

6. Another document upon which reliance has been placed by the appellants/ right holders is a sale deed, copy Ex. PW 5/A, whereby a Government undertaking, i.e. HIMFED has purchased one Bigha of land for Rs. 3,60,000/- in Mouza Pateog, or say the same Mouza, in which the subject-matter of these appeals is situated. The date of this sale deed is 20.5.1988. Notification for the acquisition of the land was issued on 27.7.1988, or say about two months after the aforesaid transaction of the sale. The learned Additional District Judge has not taken this transaction into account, because according to him only a small piece of land having an area of one Bigha was the subject-matter and also

because of this land having been purchased for commercial purpose.

7. Learned Counsel representing the Himachal Pradesh Housing and Urban Development Authority, which have now stepped into the shoes of Shimla Development Authority, has submitted that the land situated in village Patti Rihana, which was the subject-matter of the case decided by this Court, vide judgment, dated 2.12.1991, had better potential for residential and commercial use compared to the land which is the subject-matter of the present appeals, on account of its closeness to Shimla town and also because of a portion of the said land falling within the Municipal Limit of Shimla and some facilities like, school, water supply, hospital, roads etc. being available in the area of village Patti Rihana, whereas no such facilities were available in village Pateog nor was the area anywhere close to Shimla town, when the notification for acquisition was issued. The submission made by the learned Counsel for the aforesaid H.P. Housing and Urban Development Authority does not appear to be well founded. It is not in dispute that the land which is the subject-matter of the present appeals adjoins Shimla town on two sides, i.e. Bishop Cotton School on one side and Chhota Shimla on the other. Moreover, the Authority itself tendered in evidence copy of another award rendered by another Additional District Judge on 4.3.1994, in respect of some other references arising out of the same Notification, as the references which have given rise to the present appeals. The copy of that award is Ex. R-1. In the said award, it has been observed, vide para-11 at Page-10, that the land situated in Mouza Patti Rihana and Mouza Pateog, have the same potential and are similarly situated, and, therefore, they are comparable. After making this observation, the learned Additional District Judge, awarded the compensation at the same rate at which the compensation was assessed by this Court in the above referred to judgment dated 2.12.1991 in respect of Mouza Patti Rihana, without giving any increase for the escalation in prices of land from 1980 to 1988, in spite of the fact that it was held that the two lands are similarly situated.

8. In view of what has been stated hereinabove, it cannot be said that the land which is the subject-matter of the present appeals has lesser potential compared to the land situated in Mouza Patti Rihana, which was the subject-matter of the appeal decided by this Court on 2.12.1991. The No. and particulars of that appeal are RFA No. 1 of 1988, Shimla Development Authority, Shimla v. Smt. Krishna Devi and several connected matters. Now, if the lands situated in the two villages have the same potential or are similarly situated, the learend Additional District Judge, ought to have given an increase in the market value determined by this Court vide judgment dated 2.12.1991, in respect of the land situated in village Patti Rihana, because there had been a long time lag of eight years between the issuance of the notification for the acquisition of land, which was the subject-matter of appeals decided by this Court vide judgment dated 2.12.1991, and the land which is the subject-matter of the present appeals. It is a matter of common knowledge that during the decade of eighties, prices of land high rocketed. The prices can legitimately be presumed to have gone up at-least at

the rate of 10%, per annum, during the aforesaid period of eight years. Therefore, 80% increase was required to be given in the market value assessed by this Court, vide judgment dated 2.12.1991, in respect of land of Patti Rihana, which was notified for acquisition in the year 1980, to arrive at the correct figure of market value of the land prevailing in the year 1988. If such an increase is given, the market value of the land comes to Rs. 2,20,500/-.

9. The learned Additional District Judge was also wrong in not relying upon the sale deed Ex. PW 5/A, whereby a Government undertaking purchased one Bigha land about two months prior to the issuance of the notification, for Rs. 3,60,000/- and the land was situated in village Pateog itself. By treating the sale consideration of this deed as the retail price, the Additional District Judge could have arrived at the market value of the land by making suitable cut on account of development charges. Learned Counsel representing the appellants says that in fact no cut is to be made on account of development charges, as the entire land acquired by the Shimla Development Authority, which is the subject-matter of the present appeals, was already developed. There is no evidence in support of this submission of the Counsel for the appellants, and therefore, the same is rejected.

10. Now what could have been the suitable cut in the aforesaid retail price to work out the whole sale price depended upon various factors, i.e. the gradient, the area which could not have at all been utilized, streets, water and electricity supply, parks etc. In the case of land acquired in village Patti Rihana, which was the subject-matter of the case decided by this Court, vide judgment, dated 2.12.1991, 30% cut had been made in the retail price of the land to work out the whole sale price. It has already been noticed that the land, which is the subject-matter of these appeals is similarly situated as the land which was the subject-matter of the appeal decided on 2.12.1991. Therefore, the cut could have been made at the rate of one-third. Now if the retail price, i.e. Rs. 3,60,000/ - is reduced by 1/3rd, the whole sale price comes to Rs. 2,40,000/-.

11. As a result of the above discussion, it is held that the market value of the land, which is the subject-matter of the present appeals was Rs. 2,20,000/-, per Bigha at the time of its acquisition, i.e. in the year 1988. Accordingly, it is ordered that enhanced compensation, i.e. the difference between the market value as assessed by the Additional District Judge and the market value worked out hereinabove together with all incidental benefits, like compulsory acquisition charges, interest etc. etc., to which the appellants are entitled, as per the provisions of the Land Acquisition Act, be paid to them.

12. Appeals stands disposed of.

